

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2011-302
HOUSE BILL 751**

AN ACT TO EXPAND THE APPLICATION OF THE ONE PERCENT, EIGHTY DOLLAR EXCISE TAX ON CERTAIN MACHINERY AND EQUIPMENT TO SPECIALIZED EQUIPMENT USED AT A PORT FACILITY AND TO MACHINERY USED AT A LARGE MANUFACTURING AND DISTRIBUTION FACILITY; TO PROVIDE TIER ONE TREATMENT FOR PORT ENHANCEMENT ZONES; TO RETAIN AND ENCOURAGE INVESTMENT IN ECONOMICALLY DISTRESSED TIMES TO REMAIN ELIGIBLE TO TAKE AN INSTALLMENT OF A CREDIT EARNED UNDER THE BILL LEE ACT; AND TO AMEND THE AUTHORIZATION TO ISSUE SPECIAL INDEBTEDNESS FOR AN EDUCATIONAL BUILDING AT APPALACHIAN STATE UNIVERSITY.

The General Assembly of North Carolina enacts:

PART 1. EXPAND EXCISE TAX ON MILL MACHINERY.

SECTION 1. G.S. 105-187.51B reads as rewritten:

"§ 105-187.51B. Tax imposed on certain recyclers, research and development companies, ~~and industrial machinery refurbishing companies~~, companies, and companies located at ports facilities.

- (a) Tax. – A privilege tax is imposed on the following:
- (1) A major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:
 - a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.
 - b. Port and dock facilities.
 - c. Rail equipment.
 - d. Material handling equipment.
 - (2) A research and development company in the physical, engineering, and life sciences that is included in industry 54171 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:
 - a. Is capitalized by the company for tax purposes under the Code.
 - b. Is used by the company in the research and development of tangible personal property.
 - c. Would be considered mill machinery or mill machinery parts or accessories under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.



- (3) A software publishing company that is included in the industry group 5112 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:
 - a. Is capitalized by the company for tax purposes under the Code.
 - b. Is used by the company in the research and development of tangible personal property.
 - c. Would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.
- (4) An industrial machinery refurbishing company that is included in industry group 811310 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:
 - a. Is capitalized by the company for tax purposes under the Code.
 - b. Is used by the company in repairing or refurbishing tangible personal property.
 - c. Would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used by the industry or plant to manufacture tangible personal property.
- (5) A company located at a ports facility for waterborne commerce that purchases specialized equipment to be used at the facility to unload or process bulk cargo to make it suitable for delivery to and use by manufacturing facilities.

(b) Rate. – The tax is one percent (1%) of the sales price of the equipment or other tangible personal property. The maximum tax is eighty dollars (\$80.00) per article."

SECTION 2. Article 5F of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-187.51D. Tax imposed on machinery at large manufacturing and distribution facility.

(a) Definition. – For the purposes of this section, a 'large manufacturing and distribution facility' is a facility that is to be used primarily for manufacturing or assembling products and distributing finished products for which the Secretary of Commerce makes a certification that an investment of private funds of at least eighty million dollars (\$80,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 550 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation.

(b) Tax. – A privilege tax is imposed on a large manufacturing and distribution facility that purchases mill machinery, distribution machinery, or parts or accessories for mill machinery or distribution machinery for storage, use, or consumption in this State. The tax is one percent (1%) of the sales price of the machinery, part, or accessory purchased. The maximum tax is eighty dollars (\$80.00) per article. As used in this section, the term 'accessories' does not include electricity.

(c) Forfeiture. – If the required level of investment or employment to qualify as large manufacturing and distribution facility is not timely made, achieved, or maintained, then the rate provided under this section is forfeited. If the rate is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the rate provided under this section is forfeited on all purchases. If the rate is forfeited due to a failure to maintain the minimum required employment level once that level has been achieved, then the rate provided under this section is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the minimum required employment level.

A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the sales or use tax would otherwise have been due. A credit is allowed against the State sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(d) Sunset. – This section expires for sales occurring on or after July 1, 2018."

SECTION 3.(a) Definitions. – The following definitions apply in this section:

- (1) Eligible property. – Distribution machinery, or parts or accessories for distribution machinery, for storage, use, or consumption in this State.
- (2) Large manufacturing and distribution facility. – A facility that is to be used primarily for manufacturing or assembling products and distributing finished products for which the Secretary of Commerce makes a certification that an investment of private funds of at least eighty million dollars (\$80,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 550 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation.

SECTION 3.(b) Refund. – For purchases of eligible property made on or after July 1, 2012, but before July 1, 2013, a large manufacturing and distribution facility is allowed a refund of all local sales and use taxes paid and a portion of State sales and use taxes paid on the purchases as provided in this section. The portion of the State sales and use taxes that may be refunded is equal to the excess of the State sales and use taxes paid over the amount that would have been due had the taxpayer been subject to tax on the eligible property if it were mill machinery under Article 5F of Chapter 105 of the General Statutes. A request for a refund under this section must be in writing and must include any information and documentation required by the Secretary. A request for a refund under this section must be made on or after July 1, 2013, and is due before January 1, 2014. Refunds applied for after the due date are barred taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21.

SECTION 3.(c) Forfeiture. – If the required investment or minimum employment level to qualify as a large manufacturing and distribution facility is not timely made or achieved, then the refund provided under this section is forfeited. A taxpayer that forfeits a refund under this section is liable for all sales and use taxes refunded under this section, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the refund was made. The forfeited refund and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the forfeited refund and interest by the due date is subject to the provisions of G.S. 105-236.

SECTION 4. Sections 1 and 2 of this act become effective July 1, 2013, and apply to purchases made on or after that date.

PART 2. PORT ENHANCEMENT ZONES.

SECTION 5. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-437.012. Port enhancement zone designation.

(a) Port Enhancement Zone Defined. – A port enhancement zone is an area that meets all of the following conditions:

- (1) It is comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.
- (2) All of the area is located within 25 miles of a State port and is capable of being used to enhance port operations.
- (3) Every census tract and census block group that comprises the area has at least eleven percent (11%) of households with incomes of fifteen thousand dollars (\$15,000) or less.

(b) Limitations and Designation. – The area of a county that is included in one or more port enhancement zones shall not exceed five percent (5%) of the total area of the county. Upon application of a county, the Secretary of Commerce shall make a written determination whether an area is a port enhancement zone that satisfies the conditions of subsection (a) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all port enhancement zones with a description of their boundaries.

- (1) A map showing the census tracts and block groups that would comprise the zone.
- (2) A detailed description of the boundaries of the area that would comprise the zone.
- (3) A certification regarding the size of the proposed zone.
- (4) Detailed census information on the county and the proposed zone.
- (5) A resolution of the board of county commissioners requesting the designation of the area as a port enhancement zone.
- (6) Any other material required by the Secretary of Commerce."

SECTION 6. G.S. 105-129.81 is amended by adding a new subdivision to read:

"§ 105-129.81. (See notes) Definitions.

The following definitions apply in this Article:

- ...
- (20a) Port enhancement zone. – Defined in G.S. 143B-437.012.
-"

SECTION 7. G.S. 105-129.83 reads as rewritten:

"§ 105-129.83. Eligibility; forfeiture.

...

(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone but not in a development tier one area satisfy the wage standard if they pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

In making the wage calculation, the taxpayer shall include any jobs that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those jobs are not filled at the time the taxpayer claims the credit. For a

taxpayer with a taxable year other than a calendar year, the taxpayer shall use the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation.

...

(l) **Planned Expansion.** – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress ~~zone~~ zone, port enhancement zone, or agrarian growth zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress ~~zone~~ zone, port enhancement zone, or agrarian growth zone designations in effect at that time.

...."

SECTION 8. G.S. 105-129.87 reads as rewritten:
"§ 105-129.87. Credit for creating jobs.

(a) **Credit.** – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone, the amount of the credit is increased by one thousand dollars (\$1,000) per job. In addition, if a job located in an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone is filled by a resident of that zone or by a long-term unemployed worker, the amount of the credit is increased by an additional two thousand dollars (\$2,000) per job.

Area Development Tier	Amount of Credit
Tier One	\$12,500
Tier Two	5,000
Tier Three	750

(b) **Threshold.** – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone, the applicable threshold is the one for a development tier one area. New jobs created in an urban progress ~~zone~~ zone, a port enhancement zone, or an agrarian growth zone are not aggregated with jobs created at any other eligible establishments regardless of county.

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	15

(c) **Calculation.** – A job is located in a county, an urban progress zone, a port enhancement zone, or an agrarian growth zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer

creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

...

(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

...."

SECTION 9. G.S. 105-129.88 reads as rewritten:

"§ 105-129.88. (See notes) Credit for investing in business property.

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business property in service in an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

Area Development Tier	Applicable Percentage
Tier One	7%
Tier Two	5%
Tier Three	3.5%

...

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone, the applicable threshold is the one for a development tier one area. Business property placed in service in an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone is not aggregated with business property placed in service at any other eligible establishments regardless of county. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible business property in service at an establishment over the course of a two-year period, the

applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Development Tier	Threshold
Tier One	\$ -0-
Tier Two	1,000,000
Tier Three	2,000,000

...
(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or out of an urban progress ~~zone-zone~~, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress ~~zone-zone~~, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

...."
SECTION 10. Sections 5 through 10 of this act are effective for taxable years beginning on or after January 1, 2013.

PART 3. ENCOURAGE INVESTMENT TO RETAIN ARTICLE 3A INSTALLMENT.

SECTION 11. G.S. 105-129.12A(c) reads as rewritten:

"(c) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used in an eligible business, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used in an eligible business, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. ~~If, in~~In one of the years in which the installment of a credit accrues and by which the taxpayer is required to have created 200 new jobs at the property, if (i) the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than 200,200 and (ii) the taxpayer has failed to maintain at least 125 employees at the property and, within two years of the date the employment fell below 200, to invest at the property the greater of five million dollars (\$5,000,000) or at least twice the value of the remaining installments of the credit, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

SECTION 12. Section 11 of this act is effective for taxable years beginning on or after January 1, 2009.

PART 4. EDUCATIONAL BUILDING AT APPALACHIAN STATE UNIVERSITY

SECTION 13. Subdivision (a)(1) of Section 29.13 of S.L. 2007-323, as amended by Section 27.12A of S.L. 2009-451, reads as rewritten:

"**SECTION 29.13.(a)** The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized

to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the projects described in this subsection. In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness:

- (1) In the maximum aggregate principal amount of thirty-four million dollars (\$34,000,000) to finance the capital facility costs of completing a new educational building at Appalachian State University and acquiring and improving adjacent real property related to the project. No more than a maximum aggregate amount of three million dollars (\$3,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008."

PART 5. EFFECTIVE DATES

SECTION 14. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2011.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 5:00 p.m. this 24th day of June, 2011